

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52517; File No. SR-NASD-2005-059)

September 27, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change, to Amend NASD Rule 7090 to Modify the Annual Listing and Administrative Fees

I. Introduction

On May 10, 2005, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Rule 7090 (“Mutual Fund Quotation Service”) to modify the annual listing and administrative fees. On June 8, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on June 21, 2005.³ The Commission received one comment on the proposal.⁴ On September 14, 2005, Nasdaq filed Amendment No. 2, which incorporated its response to the comment.⁵ This order approves the proposed rule change, as modified by Amendment No. 1,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 51836 (June 13, 2005), 70 FR 35753 (June 21, 2005) (the “Release”).

⁴ See letter from Peter G. Salmon, Director – Operations & Technology, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated July 12, 2005 (“ICI Letter”).

⁵ See Amendment No. 2. Amendment No. 2 changed the proposed implementation date from July 1, 2005 to the later date of either January 1, 2006 or on the date all of the proposed enhancements to the Mutual Fund Quotation Service (“MFQS”) have been implemented.

and provides notice of filing and grants accelerated approval of Amendment No. 2.

II. Summary of Comments

The Commission received one comment letter on the proposed rule change.⁶ The commenter stated that it supports the planned enhancements to the MFQS.⁷ In addition, the commenter does not object to the proposed fee increases, provided Nasdaq implements the planned enhancements on the schedule outlined in the Release.⁸ The commenter is concerned that changes in priorities and other factors or events could delay the implementation of the planned enhancements to the MFQS.⁹ However, the commenter urged that the proposed fee increases only be assessed once the planned enhancements are implemented.¹⁰ The commenter does not believe that its recommendation that the proposed fee increases be assessed once the planned enhancements are implemented would impede the completion of the planned enhancements.¹¹

III. Nasdaq Response to Comments

In response to the comment letter, Nasdaq amended the filing.¹² In response to the commenter's request that the proposed fee increases only be assessed once the planned enhancements are implemented, Nasdaq amended the implementation date of the changes proposed in Amendment No. 1. Specifically, Amendment No. 2 addresses the commenter's concern by stating that the proposed rule change will be implemented on the later date of either

⁶ See footnote 4, supra.

⁷ See ICI Letter at 1.

⁸ Id. at 2.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² See footnote 5, supra.

January 1, 2006 or on the date all of the proposed enhancements to the MFQS system have been implemented.

IV. Discussion and Commission Findings

After careful review of the proposal, the comment letter, and Nasdaq's response, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.¹³ In particular, the Commission believes that the proposed rule change, as amended, is consistent with Section 15A(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which NASD operates or controls. The Commission notes that the Nasdaq proposal, as amended, will not be implemented until the later of either January 1, 2006 or on the date all of the proposed enhancements to the MFQS system have been implemented. The Commission believes that this change to the proposal sufficiently addresses the concerns expressed by the commenter.

The Commission finds good cause for approving proposed Amendment No. 2 before the 30th day after the date of publication of notice of filing thereof in the Federal Register. Nasdaq filed Amendment No. 2 in response to comments it received after publication of the notice of filing of the proposed rule change, to address the commenter's concerns. Because Amendment No. 2 is responsive to the commenter's concerns, the Commission finds good cause for accelerating approval of Amendment No. 2.

¹³ In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78q-3(b)(5).

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2005-059 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-059. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NASD-2005-059 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (File No. SR-NASD-2005-059), as modified by Amendment No. 1 thereto, be, and it hereby is, approved and that Amendment No. 2 be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz
Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).